

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA**

IN RE:

JEFFREY STEVEN SAULL

Case No.: 05-37642-BKC-SHF  
Chapter 7 Proceeding

Debtor.

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**ORDER DENYING MOTION OF CREDITOR, CARO-JES FURNITURE CORP. TO  
FILE UNTIMELY COMPLAINT TO CHALLENGE DISCHARGEABILITY OF DEBT**

THIS CAUSE came before the Court on March 27, 2006 upon Motion of Creditor, Caro-jes Furniture Corp. to File Untimely Complaint to Challenge Dischargeability of Debt (C.P. 30). This case was commenced on October 14, 2005 with the debtor's filing of his voluntary chapter 7 petition. In support of its Motion to File an Untimely Complaint, Caro-jes Furniture Corporation alleges that the debtor's original schedule F did not identify Caro-Jes Furniture Corporation as a creditor but instead listed "Carojes Ent.", and further did not provide an address for this creditor except to state that "[t]hey are in hiding if they exist." (sic) On December 29, 2005, the debtor amended his creditor matrix to include the address of Caro-jes Furniture Corporation's civil

attorney, Maxwell E. Lin, Esq. However, the creditor continued to be listed as “Caro-Jes Ent.” Prior to the commencement of this case, Maxwell E. Lin, Esq., represented Caro-jes Furniture Corporation in civil actions against the debtor in the Superior Court of the State of California for the County of Los Angeles. At the March 27, 2006 hearing before this Court, Caro-jes Furniture Corporation (“Caro-jes”) asserted that, because it was not listed as a creditor either on the original bankruptcy schedules or on the amended schedules, it was not afforded adequate notice of the February 17, 2006 deadline for the filing of a complaint objecting to dischargeability of a debt. Caro-jes contends that it has yet to be listed as a creditor on the debtor’s bankruptcy schedules, and that, in the abundance of caution, it seeks an extension of time to file a complaint objecting to the dischargeability of the obligation owed by the debtor, pursuant to 11 U.S.C § 105 (a).

The debtor contends that Caro-jes was aware of the pendency of this bankruptcy proceeding as evidenced by the Notice of Representation by the Law Offices of Maxwell E. Lin, filed with this Court on behalf of Caro-jes on January 9, 2006 (C.P. 10). By way of the Notice of Representation, the Law Offices of Maxwell E. Lin requested that “. . . copies of all papers, notices, and proceedings . . .” be served upon Mr. Lin. Therefore, the debtor argues that Caro-jes was afforded sufficient notice either to file a complaint objecting to dischargeability of a debt, or to seek an extension of the February 17, 2006 deadline to file a complaint, and that it should not be permitted to file an untimely complaint. The debtor asserts that Bankruptcy Rule 4007(c) sets the deadline to file objections to dischargeability, and that the deadline may not be extended once it has passed:

. . . a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days’ notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

Fed.R.Bankr.P. 4007(c).

Thus, Rule 4007(c) permits bankruptcy courts to extend the sixty-day period if “cause” is found, but only if motion for relief is filed “before the time has expired”. *Id.*

The Court is persuaded by the position advanced by the debtor. The relief sought by Caro-jes is premised upon the debtor’s failure to properly list Caro-jes in his bankruptcy schedules. Caro-jes asks this Court to exercise its equitable powers granted by 11 U.S.C. § 105, which provides:

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Bankruptcy courts have permitted tardily-filed complaints pursuant to 11 U.S.C. § 105 (a). However, the circumstances warranting such extraordinary relief generally are limited to instances wherein the court, or clerk of court, misinforms a party regarding a deadline or the extension of a deadline. *Marshall v. Demos (In re Demos)*, 57 F.3d 1037, 1039 (11th Cir. 1995); *In re Isaacman*, 26 F.3d 629, 632 (6th Cir. 1994).

Caro-jes contends that it should be permitted to file an untimely complaint not because of misinformation transmitted by the Court, but because notice was and remains inadequate. Therefore, based upon the January 9, 2006 Notice of Representation filed by Maxwell E. Lin., Esq. on behalf of Caro-jes, the issue to be determined is whether Caro-jes Furniture Corporation had reasonable notice of the February 17, 2006 deadline to file a complaint objecting to dischargeability.

Reasonable notice is defined by the Supreme Court as “. . . notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford

them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950). One circumstance to consider is whether alleged inadequacies in the notice prejudiced the creditor. *People ex rel. Hartigan v. Peters*, 871 F.2d 1336, 1340 (7th Cir. 1989). Another is whether notice was given to the creditor in time for it to take meaningful action in response to the impending deprivation of its rights. *Memphis Light, Gas and Water Div. v. Craft*, 436 U.S. 1 (1978). Under the circumstances of this case, given the five-week lapse of time between the filing of the Notice of Representation by Maxwell E. Lin, Esq. on behalf of Caro-jes and the expiration of the deadline to file a complaint objecting to dischargeability, the Court finds that the creditor was not prejudiced, as it had sufficient time to file a complaint or to seek an extension of time to do so prior to the expiration of the bar date. Therefore, the Court does not find it appropriate to employ its equitable powers under 11 U.S.C. § 105 (a) to permit the filing of an untimely complaint. Accordingly, it is

**ORDERED** that Caro-jes Furniture Corporation’s Motion to File an Untimely Complaint Challenging the Dischargeability of Debt is **denied**.

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**The Clerk of Court is directed to serve a copy of this Order on all parties in interest.**